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6 UNITED STATES DISTRICT COURT  
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
8 OAKLAND DIVISION  
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10 LNV CORP., a Nevada corporation,

11 Plaintiff,

12 vs.

13 STK FINANCIAL, LLC, a California  
14 corporation, et al.,

15 Defendants.

Case No: C 11-00025 SBA

**ORDER**

Docket 7

16  
17 The parties are presently before the Court on Plaintiff LNV Corp.'s ("Plaintiff")  
18 motion to transfer to the United States District Court for the Western District of  
19 Washington. Dkt. 7. Having read and considered the papers filed in connection with this  
20 matter and being fully informed, the Court hereby GRANTS Plaintiff's motion to transfer  
21 for the reasons stated below. The Court, in its discretion, finds this matter suitable for  
22 resolution without oral argument. See Fed. R. Civ. P. 78(b); N.D. Cal. L.R. 7-1(b).

23 **I. BACKGROUND**

24 On October 7, 2008, Defendant STK Financial, LLC, a California corporation,  
25 entered into a promissory note and loan agreement in the amount of \$750,000 with the  
26 Bank of Clark County, located in the State of Washington. Dkt. 1 at 6-7. Defendants  
27 Kreutzelman and Kobayashi, both California residents, signed commercial guaranties in  
28 connection with the promissory note and loan agreement. Id. The promissory note, loan

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1 agreement and commercial guaranties contained forum selection clauses stating that, if  
2 there was a lawsuit, the borrowers agreed to the jurisdiction of the courts of Clark County,  
3 State of Washington. Id. at 13, 18, 23, 27. The Bank of Clark County was taken over by  
4 the Federal Deposit Insurance Corporation (“FDIC”). Id. ¶28. The FDIC assigned the  
5 promissory note and commercial guaranties to Plaintiff, a Nevada corporation. Id.  
6 Defendants defaulted on the promissory note, loan agreement and guaranties. Id. ¶27.

7 On October 29, 2010, Plaintiff filed the instant action in the Superior Court of the  
8 State of Washington, Clark County to recover on a promissory note, loans and guaranties  
9 against Defendants. Dkt. 1. Based on diversity jurisdiction, 28 U.S.C. § 1332, Defendants  
10 removed the action. They did not remove the action to the district in which the state court  
11 action was pending, which was the United States District Court for the Western District of  
12 Washington, but to this Court. Id.

13 Consequently, on February 3, 2011, Plaintiff filed a motion to transfer the action to  
14 the Western District of Washington under 28 U.S.C. §§ 1406(a) and 1404(a). Dkt. 7. The  
15 hearing on the matter was set for May 3, 2011. Id. Under the Civil Local Rule in effect at  
16 the time that Plaintiff filed its motion, Defendants were required to oppose the motion or  
17 file a statement of non-opposition twenty-one (21) days before the hearing, which was  
18 April 12, 2011. Civ. L.R. 7-3(a). Defendants did not file an opposition or statement of  
19 non-opposition on April 12, 2010. On April 18, 2011, Plaintiff filed a reply pointing out  
20 that, under this Court’s Standing Orders, a failure to oppose any motion or request  
21 constitutes consent to the granting of the motion or request. Dkt. 8 at ¶8 at 2. After the  
22 briefing deadline under the Civil Local Rules closed, pursuant to Civil Local Rule 7-  
23 7(b)(2)(A), the Court continued the hearing date. As provided under Civil Local Rule 7-  
24 7(d), this continuance did not extend the time for Defendants to oppose Plaintiff’s motion  
25 because “the date for filing the papers [had] already passed prior to the date of the order for  
26 continuance.” To date, Defendants have not responded to Plaintiff’s motion.

1 **II. DISCUSSION**

2 The Court finds that, in light of its Standing Orders, Defendants' failure to oppose  
3 Plaintiff's motion constitutes consent to granting the motion, and therefore the Court  
4 GRANTS the motion on this ground. The Court now examines Plaintiff's arguments under  
5 28 U.S.C. §§ 1406(a) and 1404(a) to determine if additional grounds exist for granting the  
6 motion.

7 **A. 28 U.S.C. § 1406(A)**

8 Under 28 U.S.C. § 1446, for a defendant to remove an action, he must file a notice  
9 of removal "in the district court of the United States for the district and division within  
10 which such action is pending." Here, the action was pending in the Western District of  
11 Washington, but Defendants incorrectly filed the notice of removal in this Court. Under 28  
12 U.S.C. § 1406(a), when there is "a case laying venue in the wrong division or district[.]"  
13 the district court "shall dismiss, or if it be in the interest of justice, transfer such case to any  
14 district or division in which it could have been brought." Thus, pursuant to § 1406(a) this  
15 Court may transfer the instant action to the correct venue where the notice of removal  
16 should have been filed, i.e., the Western District of Washington. See, e.g., Shamrock Mfg.  
17 Co. v. Ammex Corp., CV-F-10-908 OWW/SKO, 2010 WL 3153976, at \*\*4-8 (E.D.Cal.  
18 Aug. 9, 2010) (transferring case to the correct venue under § 1406(a)). Hence, the Court  
19 GRANTS the motion to transfer pursuant to § 1406(a).

20 **B. 28 U.S.C. § 1404(A)**

21 Under 28 U.S.C § 1404(a), district courts have broad discretion to transfer cases. A  
22 district court may transfer any civil action to any other district or division where it might  
23 have been brought when the convenience of the witnesses and interests of justice are served  
24 by transfer. 28 U.S.C § 1404(a). The statute is intended to give district courts discretion to  
25 adjudicate motions to transfer by providing "individualized, case-by-case consideration of  
26 convenience and fairness." Van Dusen v. Barrack, 376 U.S. 612, 622 (1964). Under §  
27 1404(a), a forum selection clause is considered a significant factor favoring transfer to the  
28 agreed upon forum. Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 29 (1988). In the

1 instant action, the forum selection clauses in the promissory note, loan agreement and two  
2 guaranties specify that the parties agree to the jurisdiction of the courts in Clark County,  
3 Washington. Thus, the forum selection clauses weigh strongly in favor of transfer to the  
4 Western District of Washington pursuant to § 1404(a). Accordingly, the Court GRANTS  
5 Plaintiff's motion under § 1404(a).

6 **III. CONCLUSION**

7 For the foregoing reasons,

8 IT IS HEREBY ORDERED THAT:

9 1. Plaintiff's motion to transfer is GRANTED.

10 2. This action shall be TRANSFERRED forthwith to the United States District  
11 Court for the Western District of Washington.

12 3. This Order terminates Docket No. 7.

13 IT IS SO ORDERED.

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16 Dated: September 12, 2011

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge